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Dickinson Wright PLLC
James E. Ledbetter, Esq.
International Square
1875 Eye Street, N.W., Suite 1200
Washington, DC 20006

EXAMINER
DONADO, FRANK E

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/567,607	PETROVIC ET AL.
	Examiner	Art Unit	
	FRANK DONADO	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 December 2008*.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-36 and 39-43* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) *1-36 and 39-43* is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a)☐ All   b)☐ Some * c)☐ None of:
        1.☐ Certified copies of the priority documents have been received.
        2.☐ Certified copies of the priority documents have been received in Application No. _____.
        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)
1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.
4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

Response to Amendment

1.   The amendment filed on 12/10/08 has been entered. Claims 1-5, 7, 10, 11, 18-

21, 23-25, 27, 32, 33, 35, 36, 39 and 41-43 have been amended. Claims 37 and 38

have been cancelled. No claims have been added. Claims 1-36 and 39-43 are

currently pending in this application, with claims 1, 19 and 42 being independent.

Claim Rejections - 35 USC § 102

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by
> another filed in the United States before the invention by the applicant for patent or (2) a patent
> granted on an application for patent by another filed in the United States before the invention by the
> applicant for patent, except that an international application filed under the treaty defined in section
> 351(a) shall have the effects for purposes of this subsection of an application filed in the United States
> only if the international application designated the United States and was published under Article 21(2)
> of such treaty in the English language.

3.   Claims 1-9, 11-17, 19-32 and 34-36 and 39-43 rejected under 35 U.S.C. 102(e)

as being anticipated by Yoshimura **(US Patent No. 6,754,494).**

Regarding claim 1, Yoshimura teaches a method for controlling a plurality of

base stations in a mobile communication system comprising a communication terminal,

said plurality of base stations and a control unit connected to said plurality of base

stations, the communication terminal being in communication with said plurality of base

stations during a soft handover, the method comprising: evaluating, for each base

station of said plurality of base stations, an uplink channel quality characteristic between

said communication terminal and the respective base station, determining the base

station having the best uplink channel quality characteristic as a serving base station,

and controlling some or all base stations receiving data packets from the

communication terminal during soft handover and other than the serving base station

not to forward the received data packets to said control unit during the soft handover (**A**

"handover deleting operation" is the method of controlling the base stations not

to forward the data packets, where the control unit 211 of Figure 2 is the control

unit to which data packet information gets forwarded through frame error rate

(FER) information, and signal-to-interference power (SIR) ratio is also a quality

channel characteristic that gets evaluated to determine appropriate base station

during handover, Column 1, lines 24-29, Column 2, lines 24-32 and Column 5,

lines 59-62).

Regarding claim 2, Yoshimura teaches the method according to claim 1, further

comprising: receiving a data packet from said communication terminal at said plurality of

base stations, checking data integrity of said received data packet at each of said

plurality of base stations, and transmitting said received data packet and/or a control

packet from the respective base station to said control unit if data integrity of said

received data packet was confirmed by a base station controlled to forward said

received data packet to said control unit, wherein the control packet acknowledges the

correct reception of said data packet (**A "handover adding process" includes a radio**

link controller, 303 of Figure 3A, that is part of the control unit and makes a

decision as to the result of the selection of a "candidate" base station for a

particular mobile station. If the result is successful, a matching-oriented table Ui

is updated so that the candidate base station now becomes the official base station assigned to the mobile station, and FER information continues to be received by the control unit, Column 10, lines 61-67, Column 11, lines 1-2 and 18-22 and Column 7, lines 22-29).

Regarding claim 3, Yoshimura teaches the method according to claim 1, further comprising: transmitting a notification from the respective base station to said control unit if data integrity of said received data packet was not acknowledged by a base station, wherein the notification indicates that data integrity of said received data packet was not acknowledged by said respective base station (**The handover deleting process includes a radio link controller, 303 of Figure 3A, that is part of the control unit and makes a decision as to the result of the selection of a "candidate" base station for a particular mobile station. If the result is a failure, a matching-oriented table Ui is updated so that the candidate base station may not become the official base station assigned to the mobile station, and FER information continues to be received by the control unit, Column 10, lines 61-67, Column 11, lines 1-2 and 14-18 and Column 7, lines 22-29).**

Regarding claim 4, Yoshimura teaches the method according to claim 1, further comprising: transmitting a notification from said serving base station to said control unit if data integrity of said received data packet was not acknowledged by said serving base station, wherein the notification indicates that data integrity of said received data packet was not acknowledged by said serving base station (**The handover deleting process includes a radio link controller, 303 of Figure 3A, that is part of the**

control unit and makes a decision as to the result of the selection of a
"candidate" base station for a particular mobile station. If the result is a failure,
and the candidate base station has already been retried the maximum number of
times, a matching-oriented table Ui is updated so that the candidate base station
may not become the official base station assigned to the mobile station, and FER
information continues to be received by the control unit, Column 10, lines 61-67,
Column 11, lines 1-2, 8-11 and 14-18 and Column 7, lines 22-29).

Regarding claim 5, Yoshimura teaches the method according to claim 4, further
comprising: transmitting by said control unit in response to receiving said notification
from said serving base station a status request relating to said received data packet
from the other base stations than that selected base station, and receiving status
reports relating to said received data packet from said other base stations, wherein said
status report indicates whether data integrity of said data packet was confirmed at the
respective base station or comprises said received data packet (The control unit
requests FER information. The matching table is used in a matching process that
evaluates the FERS's of candidate and other base stations when changes in
FER's occur through a learning part unit, Column 11, lines 14-18 and 32-40,
Column 7, lines 31-36 and 46-55 and Figure 17).

Regarding claim 6, Yoshimura teaches the method according to claim 3, wherein
said notification and said status report are transmitted to the control unit in at least one
frame protocol control frame or by radio network signaling messages over a wired
interface (The control unit receives control signals regarding FER information

through a control signal analyzer, Column 7, lines 22-23).

Regarding claim 7, Yoshimura teaches the method according to claim 1, wherein selecting the serving base station is executed by said control unit (**Control unit 211 of Figure 2 includes the Handover Base Station Selector 302 of Figure 3A**).

Regarding claim 8, Yoshimura teaches the method according to claim 1, wherein said selection of the serving base station is periodically triggered by a configurable timer (**Steps 804-806 in Figure 8 define the handover adding process being triggered by a timer**).

Regarding claim 9, Yoshimura teaches the method according to claim 8, wherein said timer value is signaled to said serving base station within a radio link addition function or a combined radio link addition and removal function (**The base station selector 302 of Figure 3A is connected to a Radio Link Controller 303, where both are part of the control unit, the base station selector determines a time variable during which a base station is to be selected, and an addition takes place at step 807 to determine if a threshold has been met, Column 15, lines 46-49 and Figure 8**).

Regarding claim 11, Yoshimura teaches the method according to claim 1, wherein evaluating an uplink channel quality characteristic comprises averaging parameters indicating the uplink channel quality over a configurable time interval (**Taking a weighted average is part of the handover adding process, and these values are taken from time t-n to time t when FER is used as the uplink channel**

quality characteristic, steps 413-414 in Figure 4 and Column 18, lines 8-11).

Regarding claim 12, Yoshimura teaches the method according to claim 11, wherein said time interval is configured by at least one signaling message of a radio resource control protocol or at least one system specific control plane protocol message (Column 2, lines 41-46).

Regarding claim 13, Yoshimura teaches the method according to claim 11, wherein said time interval is selected taking into account the velocity in a movement of said communication terminal, the signaling delay between said control unit and a base station, and the signaling delay between different control units in the mobile communication system (The handover operation may occur while the mobile terminal is moving, and the method reduces delays in processing times throughout the system by using time-sequential signal quality characteristics, Column 2, lines 19-32).

Regarding claim 14, Yoshimura teaches the method according to claim 1, wherein said control unit transmits a selection command to the new serving base station upon selection (The control unit selects the best base station during the handover process among several potential base stations, informing the selected base station that it has been selected as the optimum base station by updating the reference table Ui so that it can more easily be selected than the other base stations, Column 3, lines 61-65, Column 5, lines 13-17 and Column 11, lines 19-22).

Regarding claim 15, Yoshimura teaches the method according to claim 14, wherein said control unit further transmits the selection command to the previous serving base station (**The control unit selects the best base station during the handover process among several potential base stations, informing the non-optimal base station, in this case being the previous serving base station that it has not been selected as the optimum base station by updating the reference table Ui so that it cannot be selected over the optimal base station, Column 3, lines 61-65, Column 5, lines 13-17 and Column 11, lines 24-28**).

Regarding claim 16, the method according to claim 14, wherein the selection command indicates an activation time at which the new serving base station should start forwarding the successful received data packets, control packets or notifications to said control unit and at which the previous serving base station should stop forwarding the successfully received data packets, control packets or notifications to said control unit (**The optimal base station knows at the time the table Ui is updated to start forwarding successful received data packets, and the previous base station knows at the time the table Ui is updated to stop forwarding successful received data packets Column 11, lines 19-22 and 24-28**).

Regarding claim 17, the method according to claim 16, wherein the previous serving base station and said control unit negotiate said activation time by exchanging control messages (**The control unit updates the Ui table so the appropriate signals can be sent to the previous serving base station so it does not connect, Column 11, lines 24-28**).

Regarding claim 19, Yoshimura teaches a method for controlling a plurality of base stations in a mobile communication system comprising a communication terminal, said plurality of base stations and a gateway interconnecting said mobile communication network to a fixed communication network, the communication terminal being in communication with said plurality of base stations during a soft handover, the method comprising: for each base station of said plurality of base stations, evaluating an uplink channel quality characteristic between said communication terminal and the respective base station, determining the base station having the best uplink channel quality characteristic, selecting the determined base station as a serving base station, and controlling some or all base stations receiving data packets from the communication terminal during soft handover and other than the serving base station not to forward the received data packets to said gateway unit during the soft handover **(A "handover deleting operation" is the method of controlling the base stations not to forward the data packets, where the control unit 211 of Figure 2 is the control unit to which data packet information gets forwarded through frame error rate (FER) information, signal-to-interference power (SIR) ratio is also a quality channel characteristic that gets evaluated to determine appropriate base station during handover, and the Base Station Control Device of Figure 2 that contains the control unit 211 serves as the gateway through which optimum signals must pass before approving base stations as optimum ones for specific mobile stations, Column 1, lines 24-29, Column 2, lines 24-32 and Column 5, lines 59-62).**

Regarding claim 20, Yoshimura teaches the method according to claim 19,

further comprising: receiving a data packet from said communication terminal at said
plurality of base stations, checking data integrity of said received data packet at each of
said plurality of base stations, and if data integrity of said received data packet was
confirmed by a base station controlled to forward said received data packet to said
gateway, transmitting said received data packet from the respective
base station to said gateway (**A "handover adding process" includes a radio link
controller, 303 of Figure 3A, that is part of the control unit and makes a decision
as to the result of the selection of a "candidate" base station for a particular
mobile station. If the result is successful, a matching-oriented table Ui is updated
so that the candidate base station now becomes the official base station
assigned to the mobile station, and FER information continues to be received by
the control unit, Column 10, lines 61-67, Column 11, lines 1-2 and 18-22 and
Column 7, lines 22-29**).

Regarding claim 21, Yoshimura teaches the method according to claim 19,
further comprising: if data integrity of said received data packet was not acknowledged
by said serving base station, transmitting from said serving base station a status
request relating to said received data packet to the other base stations than said serving
base station, and receiving status reports relating to said received data packet from said
other base stations, wherein said status report indicates whether data integrity of said
data packet was confirmed at the respective base station or comprises said received
data packet (**The control unit requests FER information. The matching table is
used in a matching process that evaluates the FERS's of candidate and other**

base stations when changes in FER's occur through a learning part unit, Column 11, lines 14-18 and 32-40, Column 7, lines 31-36 and 46-55 and Figure 17).

Regarding claim 22, Yoshimura teaches the method according to claim 19, wherein said notification and said status report are transmitted to said serving base station in at least one frame protocol control frame or by radio network signaling messages over a wired interface (The control unit receives control signals regarding FER information through a control signal analyzer, Column 7, lines 22-23).

Regarding claim 23, Yoshimura teaches the method according to claim19, wherein selecting the serving base station is executed by the current serving base station (Control unit 211 of Figure 2 includes the Handover Base Station Selector 302 of Figure 3A that is connected to the current serving base station).

Regarding claim 24, Yoshimura teaches the method according to claim 1 or 19, wherein said uplink channel quality characteristic is determined based on at least one of a path loss for an uplink channel between said communication terminal and the respective base station, closed loop power control commands transmitted by a base station to said communication terminal and uplink interference (Column 2, lines 25-33).

Regarding claim 25, Yoshimura teaches the method according to claim 1 or 19, wherein said selection of the serving base station is independent from uplink data channel air interface transmission (The method takes into account air interference from other transmissions, Column 2, lines 25-33).

Regarding claim 26, Yoshimura teaches the method according to claim 19, wherein said selection of the serving base station is periodically triggered by a configurable timer **(Steps 804-806 in Figure 8 define the handover adding process being triggered by a timer)**.

Regarding claim 27, Yoshimura teaches the method according to claim 19, wherein evaluating an uplink channel quality characteristic comprises averaging parameters indicating the uplink channel quality over a configurable time interval **(Taking a weighted average is part of the handover adding process, and these values are taken from time t-n to time t when FER is used as the uplink channel quality characteristic, steps 413-414 in Figure 4 and Column 18, lines 8-11)**.

Regarding claim 28, Yoshimura teaches the method according to claim 27, wherein said time interval is configured by radio resource control signaling or another system specific control plane protocol **(Column 2, lines 41-46)**.

Regarding claim 29, Yoshimura teaches the method according to claim 27, wherein said time interval is selected taking into account the velocity in a movement of said communication terminal, and the signaling delay between at least two base stations of said plurality of base stations **(The handover operation may occur while the mobile terminal is moving, and the method reduces delays in processing times throughout the system by using time-sequential signal quality characteristics, Column 2, lines 19-32)**.

Regarding claim 30, Yoshimura teaches the method according to claim19,

wherein the current serving base station transmits a selection command to the new serving base station upon selection (**The control unit selects the best base station during the handover process among several potential base stations, informing the selected base station that it has been selected as the optimum base station by updating the reference table Ui so that it can more easily be selected than the other base stations, Column 3, lines 61-65, Column 5, lines 13-17 and Column 11, lines 19-22**).

Regarding claim 31, Yoshimura teaches the method according to claim 30, wherein the selection command indicates an activation time at which the new serving base station should start forwarding the successfully received data packets to a gateway interconnecting the mobile communication network to a fixed communication network, and at which the previous serving base station should stop forwarding the successfully received data packets to the gateway (**The optimal base station knows at the time the table Ui is updated to start forwarding successful received data packets, and the previous base station knows at the time the table Ui is updated to stop forwarding successful received data packets Column 11, lines 19-22 and 24-28**).

Regarding claim 32, Yoshimura teaches the method according to claim 15 or 30, wherein the previous or current serving base station and the new serving base station continue their serving base station functionality in parallel for a predetermined time period (**The about to be connected base station and the current base station and other potential base stations are connected at the same time while the decision is**

made during the handover, Column 3, lines 61-65 and steps 804-806 in Figure 8 define the handover adding process being triggered by a timer.

Regarding claim 34, Yoshimura teaches the method according to claim 1, wherein the received data packet is transmitted in at least one frame protocol data frame and the control packet and/or the notification is transmitted in at least one frame protocol control frame (The control unit receives control signals regarding FER information through a control signal analyzer, Column 7, lines 22-23).

Regarding claim 35, Yoshimura teaches the method of claim 1 implemented by a base station for use in a mobile communication system according to claim 1, wherein a communication terminal is in communication with a plurality of base stations during a soft handover (Column 3, lines 60-65, Column 5, lines 59-62).

Regarding claim 36, Yoshimura teaches the method of claim 1 implemented by a control unit for use in a mobile communication system, comprising a communication terminal, a plurality of base stations and said control unit connected to said plurality of base stations, the communication terminal being in communication with said plurality of base stations during a soft handover (Column 3, lines 60-65, Column 5, lines 59-62)

Regarding claim 39, Yoshimura teaches the method according to claim 1, further comprising receiving power control commands from said plurality of base stations, for each base station of said plurality of base stations, the communication terminal determining a channel quality characteristic related to each base station based on the power control commands received from the respective base station, and transmitting

said determined channel quality characteristics to said control unit via a base station, wherein said determined channel quality characteristics are considered by said control unit or said serving base station to select a serving base station **(Column 2, lines 23-33, Column 4, lines 9-14 and 24-29 and Figure 10)**.

Regarding claim 40, Yoshimura teaches the method according to claim 39, wherein determining said channel quality characteristic for each base station comprises combining said power commands received from the respective base station over a configurable time period **(Steps 804-806 in Figure 8 define the handover adding process being triggered by a timer)**.

Regarding claim 41, Yoshimura teaches the method of claim 39 implemented by a communication terminal for use in a mobile communication system according to claim 37, comprising the communication terminal, a plurality of base stations and a control unit connected to said plurality of base stations, the communication terminal being in communication with said plurality of base stations during a soft handover **(Column 3, lines 60-65, Column 5, lines 59-62)**.

Regarding claim 42, Yoshimura teaches a mobile communication system comprising a communication terminal according to claim 41, a plurality of base stations and at least one control unit connected to said plurality of base stations, the communication terminal being in communication with said plurality of base stations during a soft handover, said plurality of base stations comprising at least one base station which comprises a section that implements a method comprising: for each base

station of said plurality of base stations, evaluating an uplink channel quality

characteristic between said communication terminal and the respective base station,

determining the base station having the best uplink channel quality characteristic,

selecting the determined base station as the serving base station, and controlling some

or all base stations receiving data packets during the soft handover and other than the

serving base station not to forward the received data packets to said control unit during

the soft handover **(A "handover deleting operation" is the method of controlling**

the base stations not to forward the data packets, where the control unit 211 of

Figure 2 is the control unit to which data packet information gets forwarded

through frame error rate (FER) information, and signal-to-interference power (SIR)

ratio is also a quality channel characteristic that gets evaluated to determine

appropriate base station during handover, Column 1, lines 24-29, Column 2, lines

24-32 and Column 5, lines 59-62).

Regarding claim 43, Yoshimura teaches a mobile communication system

comprising a communication terminal according to claim 41 and a plurality of base

stations, the communication terminal being in communication with said plurality of base

stations during a soft handover, said plurality of base stations comprising at least one

base station which comprises a section that implements a method comprising the

steps of: for each base station of said plurality of base stations, evaluating an uplink

channel quality characteristic between said communication terminal and the respective

base station, determining the base station having the best uplink channel quality

characteristic, selecting the determined base station as the serving base station, and

controlling some or all base stations receiving data packets during the soft handover

and other than the serving base station not to forward the received data packets to said

control unit during the soft handover (A "handover deleting operation" is the method

of controlling the base stations not to forward the data packets, where the control

unit 211 of Figure 2 is the control unit to which data packet information gets

forwarded through frame error rate (FER) information, and signal-to-interference

power (SIR) ratio is also a quality channel characteristic that gets evaluated to

determine appropriate base station during handover, Column 1, lines 24-29,

Column 2, lines 24-32 and Column 5, lines 59-62).

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

5.   The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
        obviousness or nonobviousness.

6.   This application currently names joint inventors. In considering patentability of

the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein

were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to

consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)

prior art under 35 U.S.C. 103(a).

7.   Claims 10, 18 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable

over Yoshimura, in view of Johansson, et al **(US PG Publication 2002/0072370)**. From

now on, Johansson, et al, will be referred to as Johansson.

    Regarding claim 10, Yoshimura teaches the method according to claim 8.

Yoshimura does not teach said timer value is signaled to said serving base station in an

information element of a Node B Application Part (NBAP) or Radio Network Subsystem

Application Part (RNSAP) radio link setup request message. Johansson teaches base

station selection method during soft handover that includes a timer value that is

signaled to said serving base station in an information element of an NBAP or RNSAP

radio link setup request message **(Paragraph 36, lines 1-3 and Paragraph 47)**. It

would have been obvious to one of ordinary skill in the art at the time of the invention to

modify the invention of Yoshimura to incorporate a timer value in an information element

of an NBAP radio link setup request message for the benefit of increased efficiency.

    Regarding claim 18, Yoshimura teaches the method according to claim 17.

Yoshimura fails to teach said control message is one of a radio link reconfiguration

message, an activation time negotiation request message, and an activation time

confirmation message of Node B Application Part (NBAP) or Radio Network Subsystem

Application Part (RNSAP) protocols. Johansson teaches control message is one of a

radio link reconfiguration message, an activation time negotiation request message, and

an activation time confirmation message of NBAP protocols **(Paragraph 36, lines 1-3**

and Paragraph 47). It would have been obvious to one of ordinary skill in the art at the

time of the invention to modify the invention of Yoshimura to incorporate a timer value in

an information element of an NBAP radio link setup request message for the benefit of

increased efficiency.

Regarding claim 33, Yoshimura teaches the method according to claim 14 or 30.

Yoshimura fails to teach the selection command is transmitted in an information element

of NBAP or RNSAP message. Johansson teaches the selection command is

transmitted in an information element of NBAP or RNSAP message. It would have

been obvious to one of ordinary skill in the art at the time of the invention to modify the

invention of Yoshimura to incorporate a timer value in an information element of an

NBAP radio link setup request message for the benefit of increased efficiency.

Response to Arguments

8.   Applicant's arguments regarding claims 1 and 19, filed 12/10/08, have been fully

considered but they are not persuasive for the following reasons:

Regarding Yoshimura not disclosing the deleted base station <u>continues to</u>

<u>receive</u> data packets from the mobile terminal, it is noted that the features upon which

applicant relies are **not recited in neither the rejected claims nor the specification**.

In fact, claims 1 and 19 state "...controlling some or all base stations receiving data packets from the communication terminal during soft handover and other than the serving base station not to forward the received data packets during the soft handover", which is contrary to the argument presented by the applicant. Furthermore, since the evaluation of uplink signal quality has already been made at the particular point in time when said base station is deleted, said deleted base station does not continue to receive packets after being deleted.

Regarding Yoshimura not disclosing communicating **payload** data packets from a mobile terminal to a base station that is disconnected from the mobile terminal (same as said deleted base station above) in a soft handover operation, it is noted that the features upon which applicant relies (i.e., **payload** data packets) are **not recited in neither the rejected claims nor the specification**. In fact, claims 1 and 19 state "...controlling some or all base stations receiving data packets from the communication terminal during soft handover and other than the serving base station not to forward the received data packets during the soft handover", which is contrary to the argument presented by the applicant. Furthermore, since the evaluation of uplink signal quality has already been made at the particular point in time when said base station is deleted, said deleted base station does not continue to receive data packets after being disconnected.

Conclusion

11.   Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the date of this final action.

12.   Any inquiry concerning this communication or earlier communications from the

examiner should be directed to FRANK DONADO whose telephone number is (571)

270-5361. The examiner can normally be reached Monday-Friday, 9:30 am-6 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Rafael Perez-Gutierrez can be reached on 571-272-7915. The fax phone

number for the organization where this application or proceeding is assigned is 571-

270-6361.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-273-8300.

Frank Donado
Art Unit 2617

/Rafael Pérez-Gutiérrez/

Supervisory Patent Examiner, Art Unit 2617